1303.

SUPREME COURT OF THE UNITED STATES.

No. 101.

DANIEL SMITH, JAMES GUTHRIE, AND ALFRED THRUSTON, APPELLANTS,

vs.

THOMAS J. CHAMBERS.

ON APPEAL FROM THE DISTRICT COURT, U. S., FOR THE DISTRICT OF TEXAS.

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[Gideon, Printer.]

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

At a district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, appointed by the honorable John C. Watrous, judge of the said court, held at the city of Galveston, on the day of December, in the year of our Lord one thousand eight hundred and forty-eight. Present, the honorable John C. Watrous, judge of the said court; James H. Cocke, marshal of the district of Texas; and James Love, clerk, among other were the following proceedings, to wit:

DANIEL SMITH, JAMES GUTHRIE, AND ALFRED THRUSTON, complainants,
vs.
THOMAS JEFFERSON CHAMBERS, defendant.

Be it remembered, that heretofore, to wit, on the 25th day of May, in the year of our Lord one thousand eight hundred and forty-eight, came Daniel Smith, James Guthrie, and Alfred Thruston, by Sherwood, Wagner & Allen, their solicitors, into said district court here, and exhibited in said court their bill of complaint against Thomas Jefferson Chambers, in the words and figures following, to wit:

To the honorable the judge of the district court of the United States, in and for the district of Texas, the same being a court of circuit court powers and jurisdiction, sitting in equity.

James Guthrie, Daniel Smith, and Alfred Thruston, who are residents of the city of Louisville, and citizens of the State of Kentucky, bring this their bill against Thomas Jefferson Chambers, who is a resident of the county of Liberty, and a citizen of the State of Texas, and thereupon your orators complain and say:

That heretofore, to wit, on or about the third day of September, in the year one thousand eight hundred and thirty-six, at the city of Louisville, in the State of Kentucky, the said defendant, Thomas Jefferson Chambers, entered into a certain contract with your orators, and which said contract, now in the hands and possession of your orators, and ready to be produced if necessary, is in the words and figures following, that is to say, "Articles of agreement entered into in the city of Louisville, State of Kentucky, this 3d day of September, 1836, between Thomas Jefferson Chambers, of Texas, on the one part, and Daniel Smith, James Guthrie, and Alfred Thruston, of the city of Louisville, of the other part, witnesseth: That whereas the said Chambers represents himself to be the fee simple owner of a large tract of land on the Brazos river, in Texas, to which he has complete and undisputable title, copies of which titles are exhibited written in

the Spanish language, but the parties of the second part not understanding either that language or the laws of Texas affecting said titles, rely upon General Chambers' representations as to his titles; and whereas the said Chambers is anxious to arm, equip, and transport a body of men to Texas to aid in the achievement of her independence, which he is unable to do for the want of means; and whereas the parties of the second part to this agreement also feel deep interest and sympathy in the cause of Texas, therefore, to enable General Chambers to effect his object, the parties of the second part have agreed to purchase of General Chambers five thousand acres of his land, two thousand acres of which are to be taken from the lower part of two leagues lying on the eastern margin of the Brazos river, just above and adjacent to the San Antonio road, by a line running parallel to the lower line of the two leagues, and three thousand acres are to be taken by a similar line from the lower part of the four leagues lying also on the eastern margin of the Brazos river, just above the league granted to Letsum Purdy, and opposite the mouth of Pond creek, both tracts having been granted to said Chambers by the former State of Coahuila and Texas; the title to which five thousand acres of land, so purchased, the parties agree shall remain in General Chambers as a citizen of the State of Texas for the present. And the said Chambers binds himself and his heirs, &c., when called upon, to make a deed or deeds of general warranty to Daniel Smith for twenty-five hundred acres; to James Guthrie for twelve hundred and fifty acres; and to Alfred Thruston for twelve hundred and fifty acres of said land, which interests are at present undivided; but should they hereafter be divided, then said Chambers is to convey to each respectively the portion allotted to him according to any division the parties may choose to make among themselves; and if at any time the parties, or any one of them, shall desire the title to said land to be conveyed to any other person, then said Chambers binds himself to make the conveyance to the person designated to the extent of the interest owned by the person requesting such conveyance.

And the said Chambers hereby acknowledges to have received of the parties of the second part the sum of five thousand dollars, the consideration in full for the said five thousand acres of land; and if the parties of the second part shall choose to authorize any other person to sell said land for them, and shall invest such person with written authority to sell, then, upon the production of said written authority to said Chambers, he hereby binds himself to make conveyance to any person to whom said authorized agent may make sales of said land, or any part thereof, as may be requested by said agent.

(Signed) T. JEFFERSON CHAMBERS,
JAMES GUTHRIE,
DANIEL SMITH,
ALFRED THRUSTON.

And your orators further shew unto your honor that, at and during the negotiation respecting the said several matters embraced in the

said contract, the said defendant represented and held out to the parties of the second part, and caused it to be believed by them, your orators, that he had an absolute and indefeasible title in fee simple to the said land in the said contract mentioned, and therein and thereby agreed to be conveyed, and that the same was indisputable and had accrued to him, the said defendant, in good faith, from the government of the country for a past and executed consideration; and your orators relying on the representations of the said defendant, and believing the same to have been made in good faith, were thereupon induced to enter into the said contract, and make the advances or payments as therein specified, and as therein acknowledged, in the full expectation and belief that the said lands were and would be a good, sufficient, and valid security for the payment or advances made by them.

And your orators further show unto your honor, that the said contract has never yet been performed on the part of the said defendant, but that the same now remains unperformed by him, and in no way cancelled; that the interest of your orators therein remains undivided, and that your orators are still the persons beneficially interested in the said contract, and have full right to insist upon the performance of the said contract, either jointly or as individuals, according to the nature of the said contract and their respective interest as created by virtue of the same.

And your orators further show unto your honor that, owing to the unsettled state of the country, and the supposed disability under which they labored as it respects holding of real estate in Texas, they did not urge the performance of the said contract by the said defendant until the annexation of Texas to the United States; that after said annexation, and within the last two years, your orators have applied to the said defendant, Thomas Jefferson Chambers, by their agents and otherwise, and requested him to perform the said contract, as they well hoped he would and could do; but your orators have been unable to obtain any performance of the said contract whatever on the part of the said defendant.

And your orators further show unto your honor that lately, and within three months last past, your orators have applied to the said defendant, and through their lawfully authorized agent have requested the said defendant to perform his said contract by making a conveyance of the said lands to them by warrantee deed as mentioned in the said contract set out in this your orators' bill of complaint; but, so it is, that the said defendant has sometimes pretended, when application as aforesaid has been made to him for performance, that your orators at the time of the execution of the said contract were aliens, and therefore not entitled to take, hold, and convey real estate in Texas, whereby, as pretended by him, the said contract was void in its inception; that at other times very lately, when the said defendant has been applied to as aforesaid by your orators for performance, he has held out and pretended that the said lands agreed to be conveyed by him to your orators, as stipulated in the said contract set out in the bill, were held in possession by adverse claimants, or by persons claiming adversely to

him; that one or more suits were depending and undetermined between him, the said defendant, and the person or persons claiming adversely to him, and that therefore he, the said defendant, would make no title to your orators except a deed of conveyance, amounting to a mere quit claim deed of his own title.

And your orators further show unto your honor, that very lately, and within a few days last past, your orators, by their agent, applied to the said defendant for a final answer as to what he would do in relation to the performance of the said contract by a conveyance of the said lands as aforesaid agreed to be conveyed by him; that your orators' agent requested the said defendant to draw out *of* a deed such as he would be willing to execute; that said defendant thereupon drew out the form of a deed and presented the same as the only one, and declared the same contained all the warranty he would give or make as to the title in a conveyance of the said lands in the performance of his said contract; and which said form of a deed or conveyance your orators aver contained no other warranty of a title than a mere guarantee against defeasance of title by the mere act of defendant since his title accrued; that defendant also declared that, in case your orators would not accept such deed they would never get any thing; which said objections, pretences, and refusals on the part of the said defendant are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orators.

And your orators further show unto your honor, that from the recitals contained in the said contract, set forth in your orators' bill of complaint, expressing the representations and assurances on the part of the said defendant as to the validity of his said title to the lands agreed to be conveyed, your orators ought to have the right to insist, and therefore do insist, and claim as matter of equity, that in case the said defendant cannot make good and indefeasible title of the said lands in the contract mentioned, and so that possession may accompany the deed or deeds to your orators, that then your orators should and ought to have and recover compensation in damages, the same as though they had entered upon said lands under a deed of general warranty from defendant, and had been evicted by title adverse or paramount.

To the end, therefore, that the said defendant may, if he can, show why your orators should not have the relief hereby prayed, and may upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, direct, and perfect answer make to such of the interrogatories hereinafter mentioned and set forth, as by the note herein under written he is required to answer, that is to say:

1st. Whether he, the said defendant, as party of the one part, and complainants, as parties of the other part, executed and delivered the contract, a copy of which is set out in this bill?

2d. Whether, at the time of executing the said contract, defendant was a citizen of Texas, and whether he is now such citizen?

3d. Whether complainants, at the time of the execution of the said

contract, were citizens of the State of Kentucky, and whether they are still such citizens of that State?

4th. Whether he, the said defendant, has ever made any conveyance to complainants, or either of them, or to their assignees or legal representatives, of any part of the land mentioned in the said contract?

5th. Whether he, defendant, has been applied to by complainants, their agent or agents, or any person on their behalf, to make conveyances of the said land; if so, by whom, at what time or times, and how many times?

6th. Whether he, defendant, has lately been applied to on behalf of complainants to make conveyance; through whom was the application made; what kind of a conveyance or conveyances did defendant propose to make as to covenants of warranty; and what was the form of the deed proposed to be given by him in satisfaction of his contract?

7th. Whether he, defendant, refused to, and declared he never would, execute any other deed, or deed with any covenants of warranty, other than [those] contained in the one proposed by him?

8th. Whether defendant, when application was lately made by complainants' agent for conveyance, *he* stated to complainants' agent, and declared, that if complainants did not accept the deed, the form of which was proposed by defendant, they never would get any thing?

9th. Whether any one is in possession of the lands described in the contract set out in the bill; how many; do they claim adversely to defendant; under whom do they claim; are any suits now depending to try title; if yea, between whom are they depending; have any been tried where defendant was a party, and how determined?

10th. Whether defendant has any valid title to the lands mentioned in the contract; what title is it?

11th. Whether the title accrued to defendant for an executory or executed consideration; what was the consideration; whether any conditions attached as to the fee simple vesting in defendant; if so, have the conditions been complied with?

In consideration of the premises, therefore, your orators pray that the said defendants may be decreed to make conveyance to the said land described in the contract set out in the bill of complaint, with clauses of general warranty to be contained in the said deeds, according to his said agreement, provided he can make such conveyance, with delivery of possession, to your orators, or under which conveyance your orators can take immediate possession under the deed. But your orators will insist that they ought not to be compelled to accept of doubtful title, or title under which they cannot enter into possession of the said lands and premises, and therefore pray that, in case the defendant can not make such title as mentioned in his said contract, and accompany the same with the delivery of possession, that then your orators pray for a decree against the said defendant for the amount paid by them, together with the interest thereon, together with the costs of suit; and for such other and further relief as this honorable court may deem meet in the premises.

May it please your honor to grant unto your orators a writ of sub-

pœna, issuing out of and under the seal of this honorable court, to be directed to the said Thomas Jefferson Chambers, therein and thereby commanding him, at a day certain, and under a certain penalty therein limited, personally to be and appear before your honor in this honorable court, and then and there full, true, and perfect answer make to all and singular the premises; and further to stand to, perform, and abide such further order, direction, and decree therein, as to your honor shall seem meet; and your orators, &c.

DANIEL SMITH,
JAMES GUTHRIE,
ALFRED THRUSTON,
Complainants.

SHERWOOD & WAGNER & E. ALLEN,
Solicitors, and of counsel for complainants, residing at Galveston.

On this 25th day of May, A. D. one thousand eight hundred and forty-eight, personally came before me David Ayres, of the city of Galveston, and who, being by me duly sworn, says, he is the agent and attorney in fact of the complainants in the foregoing bill of complaint; that the said complainants reside at Louisville, in the State of Kentucky; that it would be expensive, and attended with delay, to procure the oath of either of the said complainants to the jurat of this bill; and further says, he believes he is better acquainted with the facts of the case, as a whole, than either of the said complainants; and further, that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true, according to the best of his knowledge, information, and belief.

DAVID AYRES.

Sworn and subscribed to, in open court, this 25th day of May, 1848.
THOS. BATES, *Clerk.*

The defendant, Thomas Jefferson Chambers, is required to answer the following interrogatories, numbered 1, 2, 3, &c.:

1st. Did you execute and deliver the contract, a copy of which is set out in the bill of complaint, as a party of the one part?

2d. Did complainants execute and deliver the said contract as parties of the other part?

3d. When and where was the contract executed?

4th. Have you ever made any conveyance to complainants, or either of them, or their assignees or legal representatives, or the assignees or legal representatives of either of them?

5th. Have you ever been applied to by complainants, their agent, or agents, or any person on their behalf, to make conveyance of the said land; if so, by whom; at what time or times, and how many times?

6th. Have you lately been applied to on behalf of complainants to make conveyance; through whom was the application made; what kind of conveyance or conveyances did you propose to make as to cove-

nants of warranty; and what was the form of the deed proposed to be given by you in satisfaction of your contract?

7th. Did you refuse to, and did you declare that you never would, execute any other deed with any other covenants of warranty, other than contained in the one proposed by you?

8th. When application was lately made to you by complainants' agent for conveyance, did you state to complainants' agent and declare, that if complainants did not accept the deed, the form of which was proposed by you, they never would get any thing?

9th. Is any one in the possession of the lands described in the contract set out in the bill; if so, how many and who are they?

10th. Do they claim adversely to you; if so, under whom do they claim?

11th. Are there any suits now pending to try the titles to said lands? If so, how many; between whom; have any suits of that nature been tried; if so, how determined?

12th. What title have you to the lands mentioned in the contract set out in the bill? State fully, and set out the form of the conveyance.

13th. Did your title accrue to you for an executed or executory consideration; what was the consideration; where there any conditions attached as to the vesting of the fee simple of the land in you, either by the terms of the contract or deed on its face, or by any law under which the grant was made to you; if so, what were they, and how were they complied with?

14th. Are you a citizen of Texas; are complainants citizens of Kentucky?

SHERWOOD & WAGNER, and
E. ALLEN,
Solicitors, and of counsel for complainants.

And thereupon the following subpœna was issued, to wit:

UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America, to Thomas Jefferson Chambers, greeting:

You are hereby commanded to appear personally before the honorable the United States district court, exercising the powers and jurisdiction of a circuit court of the United States, at a court to be holden in the City of Galveston, in and for said district, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you by James Guthrie, Daniel Smith, and Alfred Thruston, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of two hundred and fifty dollars.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this 25th day of May, A. D. eighteen hundred and forty-eight, and seventy-second year of the independence of the United States.

THOMAS BATES, *Clerk.*

The defendant is required to enter his appearance in the above suit in the clerk's office, on or before the first Monday in June next, otherwise the bill will be taken as confessed.

THOS. BATES, *Clerk.*

Marshal's return.

Received May 25th, 1848, and executed the same day by serving the defendant with a true copy of the within subpœna in person.

JAS. COCKE, *Marshal,*
By SAM'L. HINTON,
Deputy Marshal.

And afterwards, to wit, on the 19th day of July, A. D. 1848, came the defendant, Thomas J. Chambers, by his solicitor, and by leave of the court filed his demurrer to the bill of complaint, in the words and figures following, to wit:

The demurrer of Thomas J. Chambers, defendant, to the bill of complaint of James Guthrie, Daniel Smith, and Alfred Thruston, complainants.

This defendant, by protestation not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true, in manner and form as the same are therein and thereby set forth and alleged, saith, he is advised by his counsel that there is no matter or thing in the said bill contained good and sufficient in law to call this defendant in question in this honorable court for the same, but there is good cause of demurrer thereto, and therefore this defendant doth demur thereto, and for cause of demurrer this defendant saith:

1st. That the complainants' said bill, in case the allegations therein contained were true, which this defendant doth in no wise admit, contains not any matter of equity upon which can be grounded any decree, or by virtue of which any relief can be extended or given to the complainants.

2d. That the complainants' said bill, in case the allegations therein contained were true, which is in no sort admitted, shows not any legal and valid agreement upon which to ask the aid or decree of the court; but, to the contrary, sets out and shows an agreement which was in violation of the neutrality of the United States towards the Republic of Mexico, in her contest with Texas.

3d. That the complainants' said bill, in case the allegations therein contained were true, which in no sort is admitted, seeks the aid or assistance of the court to enforce the specific execution of an agreement which was made by and between this defendant, and citizens and residents of the State of Kentucky, in the said State of Kentucky, in violation of the policy of the Government of the United States in her intercourse with foreign nations.

4th. The said complainants' bill, in case the allegations therein contained were true, which is in no sort admitted, has not made out a case

upon which they are entitled to the aid or assistance they pray by their said bill.

6th. The complainants' bill shows that the complainants, at the time the said agreement in said bill set out was made, were, and continued to be, aliens to the Republic of Texas, and not resident therein.

Therefore, and for divers other errors and imperfections in the said bill appearing, this defendant doth demur in law thereto, and humbly demands the judgment of this honorable court, whether he shall be compelled to put in other or further answer to said bill; and humbly prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

ROB. HUGHES, *for deft.*

I do hereby certify, that, in my opinion, the above demurrer is well founded in point of law.

ROB. HUGHES.

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

This day Thomas J. Chambers personally appeared before me, Archibald M. Hughes, commissioner of affidavits, and made oath, in due form, that the foregoing demurrer is not interposed for delay.

T. J. CHAMBERS.

Sworn and subscribed, the 19th July, 1848.

A. M. HUGHES, *Comm'r.*

Decree.

And afterwards, to wit, on the 11th day of January, A. D. 1849, the following decree was rendered, to wit:

Be it remembered, that, on this 11th day of January, A. D. 1849, this cause came on to be heard upon the complainants' bill, and the demurrer of the defendants thereto, before the honorable John C. Watrous, judge, &c., in presence of counsel for both parties; and the court being sufficiently advised, thought fit to order, adjudge, and decree, and it is accordingly ordered, adjudged, and decreed, that said demurrer be allowed, and that complainants' bill be dismissed; and that they pay the costs to be taxed, &c.

JOHN C. WATROUS.

And afterwards, to wit, on the 1st day of February, A. D. 1849, in the aforesaid cause, the following order was made, to wit:

Upon motion of complainants, by counsel, it is ordered, that a re-argument upon the demurrer in this cause be, and the same is hereby, granted.

And afterwards, to wit, on the 8th day of February, A. D. 1849, in the aforesaid cause, the following order was made, to wit:

The re-argument in this cause having been fully heard, it is ordered, that the decree made herein, at a former day of this term, stand as originally entered up.

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Notice of appeal.

UNITED STATES DISTRICT COURT,
District of Texas, in equity.

DANIEL SMITH, JAMES GUTHRIE and ALFRED THRUSTON,
vs.
THOMAS JEFFERSON CHAMBERS.

And now at this day, that is to say, on the 9th day of February, in this same term, come the complainants in the above entitled cause, by their solicitors, and give notice of an appeal to the Supreme Court from the decree sustaining the demurrer, and dismissing the bill in said cause.

SHERWOOD & WAGNER, and
E. ALLEN,
Solicitors, and of counsel for complainants.

And afterwards, to wit, on the 12th February, A. D. 1849, came the complainants, by their solicitors, and filed their petition for an appeal to the Supreme Court; which petition is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
District of Texas, in equity.

DANIEL SMITH, JAMES GUTHRIE and ALFRED THRUSTON,
vs.
THOMAS JEFFERSON CHAMBERS.

To the honorable the *the* judge of the district court of the United States, for the district of Texas, the petition of Daniel Smith, James Guthrie and Alfred Thruston, respectfully sheweth:

That your petitioners are desirous of removing the above cause, by appeal, to the Supreme Court of the United States; that they are advised by counsel, and verily believe, they have good cause for such appeal; and further, that they have good ground on the merits for relief against the decree entered in the cause; your petitioners therefore pray that an appeal may be allowed in the said cause to the Supreme Court of the United States, and your petitioners, &c.

SHERWOOD & WAGNER, and
E. ALLEN,
Sols. for complts., residing at Galveston, Texas.

We, the *the* undersigned, having examined the records and proceedings in the above entitled cause, do certify that, in our opinion, there is good and sufficient cause for appeal from the final decree of the court in the same on the merits. Dated February 11th, 1849.

LORENZO SHERWOOD,
Of counsel for complts., residing at Galveston.
H. W. WAGNER,
Of counsel for complts., residing at Galveston.

United States district court, district of Texas, in equity.

DANIEL SMITH, James Guthrie, and Alfred Thruston,
vs.
THOMAS JEFFERSON CHAMBERS.

I allow the appeal in the above entitled cause to the Supreme Court of the United States, and direct the clerk to transmit a certified copy of the record and proceedings in the said cause to the said Supreme Court, on the complainants entering into bond to the defendant in the penalty of five hundred dollars, to be approved by the clerk of this court, conditioned to pay all such costs as shall be decreed against the complainants. Dated Feb. 11, 1849.

JOHN C. WATROUS,
Judge of the U. S. court for the district of Texas.

And afterwards, to wit, on the 9th day of February, A. D. 1849, the following order was made, to wit:

The complainants herein, being dissatisfied with the decree of the court herein, prayed an appeal to the next term of the Supreme Court of the United States, which is granted him upon his entering into bond as required by law.

Appeal bond.

And afterwards, to wit, on the 12th of February, A. D. 1849, the complainants, by their counsel, filed the following appeal bond in the aforesaid cause, which is in the words and figures following, to wit:

Know all men by these presents that we, David Ayres, of the city of Galveston, and Moses Park, of the county of Washington, are held and firmly bound unto Thomas Jefferson Chambers in the penal sum of five hundred dollars, to be paid to the said Thomas Jefferson Chambers, his heirs, executors, administrators, or assigns; and to which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the tenth day of February, A. D. 1849.

The condition of this obligation is such, that whereas, in a suit in the district court of the United States, for the district of Texas, in which Daniel Smith, James Guthrie, and Alfred Thruston were complainants, and the said Thomas Jefferson Chambers was defendant, a final decree has been rendered on demurrer against the said complainants, and the bill of complaint therein dismissed; and the said complainants, conceiving themselves aggrieved by such decree, have appealed therefrom to the Supreme Court of the United States:

Now, therefore, if the said Daniel Smith, James Guthrie, and Alfred Thruston shall prosecute their said appeal to effect and without delay, and, in case the said decree shall be affirmed, or the said appeal shall be dismissed, shall pay all costs, damages, and expenses which shall

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be decreed against them, then the above obligation to be void; otherwise to remain in full force.

DAVID AYRES, [SEAL.]
MOSES PARK. [SEAL.]

The above bond taken and acknowledged, and the form as well as security approved by me, this 10th day of February, A. D. 1849.

JAMES LOVE,
Clerk of the district court of the United States, for the district of Texas.

United States district court, district of Texas.

DANIEL SMITH, James Guthrie, and Alfred Thruston, complainants,
vs.
THOMAS JEFFERSON CHAMBERS, defendant.

I, James Love, clerk of the United States district court, for the district of Texas, certify, that the foregoing pages, numbered from (1) to 20, inclusive, contain a full and complete transcript of the record and all the proceedings had in the above entitled cause.

In testimony whereof I have hereunto subscribed my name as clerk aforesaid, and caused the seal of my office to be affixed, on the 24th day of July, 1849. [L. S.]

JAMES LOVE, *Clerk.*